CHAPTER 10

FRANCHISES

A. Franchise Practices Act

56:10-1. Short title

This act shall be known and may be cited as the "Franchise Practices Act."

L.1971, c.356, § 1, eff. Dec. 21, 1971

56:10-2. Legislative findings

The Legislature finds and declares that distribution and sales through franchise arrangements in the State of New Jersey vitally affects the general economy of the State, the public interest and the public welfare. It is therefore necessary in the public interest to define the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.

L.1971, c.356, § 2, eff. Dec. 21, 1971.

56:10-3. Definitions

As used in this act:

a. "Franchise" means a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services or wholesale, retail, by lease, agreement, or otherwise.

b. "Person" means a natural person, corporation, partnership, trust, or other entity and, in case of an entity, it shall

include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in active control of the activities of each such entity.

c. "Franchisor" means a person who grants a franchise to another person.

d. "Franchisee" means a person to whom a franchise is offered or granted.

e. "Sale, transfer or assignment" means any disposition of a franchise or any interest therein, with or without consideration, to include but not limited to bequest, inheritance, gift, exchange, lease or license.

f. "Place of business" means a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a residence or a vehicle.

L.1971, c.356, § 3, eff. Dec. 21, 1971

56:10-4. Franchises to which act applicable

This act applies only:

a. to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of New Jersey, (2) where gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded $35,000.00 for the 12 months next preceding the institution of suit pursuant to this act, and (3) where more than 20% of the franchisee's gross sales are intended to be or are derived from such franchise.

b. to a franchise for the sale of new motor vehicles as defined in R.S.39:10-2, the performance of which contemplates or

requires the franchisee to establish or maintain a place of business within the state of New Jersey.

L.1971, c.356, § 4, eff. Dec. 21, 1971; amended by L.1993, c.189, § 1, eff. July 19, 1998.

56:10-5. Termination of franchise; notice; grounds

It shall be a violation of this act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least 60 days in advance of such termination, cancellation, or failure to renew, except (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the aforementioned written notice may be given 15 days in advance of such termination, cancellation, or failure to renew; and (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise in which event the aforementioned termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of same at any time following the aforementioned conviction. It shall be a violation of this act for a franchisor to terminate, cancel or fail to renew a franchise without good cause. For the purposes of this act, good cause for terminating, cancelling, or failing to renew a franchise shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise.

L.1971, c.356, § 5, eff. Dec. 21, 1971.

56:10-6. Transfer of franchise; notice; approval; agreement of compliance

It shall be a violation of this act for any franchisee to transfer, assign or sell a franchise or interest therein to another

person unless the franchisee shall first notify the franchisor of such intention by written notice setting forth in the notice of intent the prospective transferee's name, address, statement of financial qualification and business experience during the previous 5 years. The franchisor shall within 60 days after receipt of such notice either approve in writing to the franchisee such sale to proposed transferee or by setting forth material reasons relating to the character, financial ability or business experience of the proposed transferee. If the franchisor does not reply within the specified 60 days, his approval is deemed granted. No such transfer, assignment or sale hereunder shall be valid unless the transferee agrees in writing to comply with all the requirements of the franchise then in effect.

L.1971, c.356, § 6, eff. Dec. 21, 1971.

56:10-7. Prohibited practices

It shall be a violation of this Act for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

a. To require a franchisee at time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act.

b. To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose.

c. To require or prohibit any change in management of any franchisee unless such requirement or prohibition of change shall be for good cause, which cause shall be stated in writing by the franchisor.

d. To restrict the sale of any equity or debenture issue or the transfer of any securities of a franchise or in any way prevent or attempt to prevent the transfer, sale or issuance of shares of stock or debentures to employees, personnel of the

franchisee, or heir of the principal owner, as long as basic financial requirements of the franchisor are complied with, and provided any such sale, transfer or issuance does not have the effect of accomplishing a sale of the franchise.

e. To impose unreasonable standards of performance upon a franchisee.

f. To provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates this act.

L.1971, c.356, § 7, eff. Dec. 21, 1971.

56:10-8. Application of act to prior grants of franchises

This act shall not apply to a franchise granted prior to the effective date of this act, provided, however, that a renewal of a franchise or an amendment to an existing franchise shall not be excluded from the application of this act.

L.1971, c.356, § 8, eff. Dec. 21, 1971.

56:10-9. Action against franchisor; defenses

It shall be a defense for a franchisor, to any action bright under this act by a franchisee, if it be shown that said franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

56:10-10. Action against franchisor; damages; injunction; costs

Any franchisee may bring an action against its franchisor for violation of this act in the Superior Court of the State of New Jersey to recover damages sustained by reason of any violation of this act and, where appropriate, shall be entitled to injunctive relief. Such franchisee, if successful, shall also be entitled to the

costs of the action including but not limited to reasonable attorney's fees.

L.1971, c.356, § 10, eff. Dec. 21, 1971.

56:10-11. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

L.1971, c.356, § 11, eff. Dec. 21, 1971.